

**IYER  
VS  
IYER AND ANOTHER**

COURT OF APPEAL,  
AMARATUNGA J  
CALA 192/2002,  
D. C. PT. PEDRO 17830/L  
AUGUST 23, 2004.

*Civil Procedure Code – Section 219 – Examination of Judgment Debtor – Money Decree – Undertaking given to Court – Violation – Is it contempt of Court? Inherent powers of Court.*

The Plaintiff sought a declaration that he is entitled to perform a certain flag hoisting ceremony and an order to restrain the Defendants from obstructing the Plaintiff. The matter was settled and the Defendant undertook to deposit a certain sum of money in Court. The Defendant did not honour this undertaking. The Plaintiff sought to examine the Defendant under Section 219 which was objected to by the Defendant but the trial Judge allowed the application. The Defendant sought leave to appeal against the said order.

**HELD** (i) Section 219 is a step in the process of executing a money decree. If there is no money decree entered against the Defendant, he is not a Judgment Debtor and accordingly he cannot be examined under Section 219.

The 1st Defendant however by signing the court record had given an undertaking that he would deposit the sum as directed.

- (ii) The Court has the power to inquire as to why the party giving the undertaking failed to honour the undertaking. In the exercise of the power court can summon and examine the party concerned. Though the Defendant cannot be examined under Section 219, the order to examine the Defendant was correct as it is an exercise of the inherent power of Court.
- (iii) An undertaking entered into or given to Court by a party or his Counsel is equivalent to and has the effect of an order of the

Court, so far as any infringement thereof may be made the subject matter of an application to the Court to punish for its breach. The undertaking to be enforced need not necessarily be embodied in an order.

- (iv) When a party has not acted according to an undertaking given to Court the Court has the power to inquire as to why the party giving the undertaking failed to honour the undertaking – That is an inherent power of Court.

**APPLICATION** for Leave to Appeal from an order of the District Court of Point Pedro.

**Cases Referred to :**

1. *In Re. P. K. Enso* – 62 NLR P 509 at 571

*A. Mutukrishna with Nilanthie Devasinghe* for Petitioner.

*Ms. C. Rajasingham with Kanchana Nagarajah* for Plaintiff Respondent.

January 10, 2005

Gamini Amaratunga, J.

*Cur adv vult.*

*Application dismissed.*

**GAMINI AMARATUNGA J.**

This is an action between the parties who have rights to administration and management of the Hindu Temple known as Sellasannathy Temple at Thondamanaru. The rights of the parties were exercised in rotation, one party exercising his rights in one year and another party in another year and so on. The party having the rights of management in any particular year has the right to conduct the annual festival that year and the income derived from the festival belongs to that party and the others who are entitled to shares.

In the year 2000 there was a dispute between the plaintiff and the 1st, 4th, 5th and 6th defendants about who should conduct the flag hoisting ceremony for the year 2000. The plaintiff filed this action praying *inter alia*

for a declaration that he was entitled to perform the flag hoisting ceremony in that year and for an order restraining the 1st, 4th, 5th and 6th defendants from obstructing the plaintiff. Whilst this action was pending, the Divisional Secretary negotiated with the parties to bring about a settlement. The parties agreed to auction the right to perform the flag hoisting ceremony. The 1st defendant was the highest bidder for the right. He was awarded the right for a sum of Rs. 900,000/-. This arrangement was without prejudice to the rights of the other parties. When this arrangement was notified to Court, an order was made directing the 1st defendant to deposit in Court a sum of Rs. 900,000/- out of the income derived from the ceremony, to be proportionately divided among the parties at the end of the case. The 1st defendant agreed to this and signed the case record.

The 1st defendant sought permission of Court to deposit Rs. 500,000/- in the first instance. Permission was granted to deposit Rs. 500,000/- first and Rs. 400,000/- later. The 1st defendant deposited Rs. 500,000/- but failed to deposit the balance 400,000/-. The first defendant's position was that the ceremony did not yield the income he expected and that therefore he was unable to deposit the balance sum.

The above is the short factual background which led to the making of the order challenged in this appeal. When the 1st defendant's failure to deposit the balance Rs. 400,000/- continued, the plaintiff moved for permission of Court to examine the 1st defendant under section 219 of the Civil Procedure Code. The learned Judge made order permitting the examination of the 1st defendant under section 219 of the Civil Procedure Code. In this appeal the learned counsel for the 1st defendant appellant contended that section 219 provides for the examination of a judgment debtor against whom a money decree has been entered. Section 219 is a step in the process of executing a money decree. The learned counsel contended that since there was no money decree entered against the 1st defendant he is not a judgment debtor and accordingly he cannot be examined under Section 219.

This argument is correct. However consequent to the order made by Court directing the 1st defendant to deposit Rs. 900,000/- in Court, the 1st defendant by signing the Court record had given an undertaking to Court that he would deposit the sum as directed. "An undertaking entered into or given to Court by a party or his counsel is equivalent to and has the effect of an order of the Court, so far as any infringement thereof may be made the subject matter of an application to the Court to punish for its breach. The undertaking to be enforced need not necessarily be embodied in an order. In *Re. P. K. Enso*<sup>(1)</sup> at 571.

When a party has not acted according to an undertaking given to Court the Court has the power to inquire as to why the party giving the undertaking failed to honour the undertaking. That is an inherent power the Court has to ensure that undertakings given to it are honoured. In the exercise of this inherent power the Court can summon and examine the party concerned. In the Court finds that the undertaking was not honoured without any excuse the Court has the power to punish the party concerned for contempt.

In the present case when the Court allowed the application to examine the 1st defendant to ascertain his means and to find why the 1st defendant did not honour the undertaking the Court was acting in the exercise of its inherent power. The only mistake made by Court was to refer to that examination as one sanctioned by section 219 of the Code. Though this reasoning was wrong the order to examine the 1st defendant was correct as it is an exercise of the inherent power of Court.

Thus there is no merit in this appeal. The appeal is dismissed and the order to examine the 1st defendant is hereby affirmed. The 1st defendant shall pay a sum of Rs. 15,000/- to the plaintiff as costs of this appeal.

*Judge of the Court of Appeal.*